

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

JOSHUA H. GOLMON, #1594842 §
VS. § CIVIL ACTION NO. 6:13cv325
DIRECTOR, TDCJ-CID §

ORDER OF DISMISSAL

Petitioner Joshua H. Golmon, an inmate confined in the Texas prison system, proceeding *pro se*, filed the above-styled and numbered petition for a writ of habeas corpus challenging his Henderson County conviction for aggravated sexual assault of a child. The petition was referred to United States Magistrate Judge Judith K. Guthrie, who issued a Report and Recommendation concluding that the petition for a writ of habeas corpus should be dismissed as time-barred.

The Petitioner has filed objections. He acknowledged that Magistrate Judge Guthrie was correct that his petition was filed over eight months too late. He argued, however, that his petition should be considered because a showing of “actual innocence” is a gateway to overcome the procedural bar of the statute of limitations. A showing of actual innocence may overcome the procedural bar, but the Supreme Court recently held that the “gateway should open only when a petition presents ‘evidence of innocence so strong that a court cannot have confidence in the outcome of the trial unless the court is also satisfied that the trial was free of nonharmless constitutional error.’” *McQuiggin v. Perkins*, 133 S.Ct. 1924, 1936 (2013) (quoting *Schlup v. Delo*, 513 U.S. 298, 316 (1995)). In his objections, the Petitioner merely stated that he “prays that he has shown the Court the evidence it need[s] to let him proceed with his writ of habeas corpus and not have it dismissed as time barred.” He did not, however, submit evidence of actual innocence, much less evidence of innocence so strong that a court cannot have confidence in the outcome of the trial. He has not shown that his petition should not be dismissed as time-barred.

The Report of the Magistrate Judge, which contains her proposed findings of fact and recommendations for the disposition of such action, has been presented for consideration, and having made a *de novo* review of the objections raised by the Petitioner to the Report, the Court is of the opinion that the findings and conclusions of the Magistrate Judge are correct and the objections of the Petitioner are without merit. Therefore the Court hereby adopts the findings and conclusions of the Magistrate Judge as the findings and conclusions of the Court. It is accordingly

ORDERED that the petition for a writ of habeas corpus is **DENIED** and the case is **DISMISSED** with prejudice. A certificate of appealability is **DENIED**. All motions not previously ruled on are hereby **DENIED**.

So ORDERED and SIGNED this 15th day of July, 2013.



LEONARD DAVIS
UNITED STATES DISTRICT JUDGE